IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. NO. 847 of 2001
(Old FAFO No. 618 of 1999)

1. Srimati Meera Bhatt aged about 36 years
   W/o Late Jagdish Prasad Bhatt.
2. Master Mayank Bhatt aged about 10 years
   S/o Late Jagdish Prasad Bhatt.
3. Master Perkher Bhatt aged about 8 years
   S/o Late Jagdish Prasad Bhatt.
   All are resident of Village Bhatt Gaon,
   (Kapaniya), Patti Lassya, Sub Teshil Jakholi,
   District Pauri Garhwal. ……Appellants

Versus

1. Sri Bhagat Singh S/o Sri Ghamand Singh,
   R/o Village Dang, Patti Kapol Suyn,
   District Pauri Garhwal.
2. Oriental Insurance Co. Ltd.,
   through its Branch Manager,
   Srinagar, District Pauri Garhwal. ……Respondents

Mr. Puran Singh Bisht and Mr. Rakesh Thapliyal, Advocates for the appellants.
Mr. Deepak Rawat, Advocate for respondent No. 2.

JUDGMENT

Coram: Hon. Rajeev Gupta, C.J.
Hon. P.C. Pant, J.

RAJEEV GUPTA, C.J. (Oral)

Mr. Rakesh Thapliyal and Mr. Puran Singh Bisht, Advocates for the appellants.

None for respondent No. 1.

Mr. Deepak Rawat, Advocate for respondent No. 2.

They are heard.

2. This is claimants' appeal for enhancement of the compensation awarded by Motor Accident Claims Tribunal, Tehri Garhwal vide Award dated 26.05.1999 passed in Motor Accident Claim Petition No. 39 of 1997.

3. The claimants – unfortunate widow and minor sons of deceased Jagdish Prasad Bhatt claimed compensation of Rs. 13,90,000/- for his

death in the motor accident on 15.05.1997 when the Jeep bearing registration No. UP06 3094, in which he was traveling, met with an accident due to rash and negligent driving of it's driver resulting in multiple injuries to Jagdish Prasad Bhatt leading to his death on his way to hospital. The claimants further pleaded that deceased Jagdish Prasad Bhatt used to earn Rs. 10,000/- per month from his workshop.

4. The owner and insurer of the Jeep contested the claim and disowned their liability to pay compensation to the claimants. The Insurance Company further pleaded that the Jeep was being plied in breach of the policy conditions and the driver was not holding a valid driving license.

5. The Tribunal, on the evidence led by the parties, held that Jagdish Prasad Bhatt died on account of the injuries sustained by him in the accident; the accident occurred due to rash and negligent driving of the driver of the Jeep; and the insurer of the Jeep was liable to pay compensation to the claimants. Considering the evidence led by the claimants in regard to the income of the deceased, the Tribunal assessed his income at Rs. 3,000/- per month. The claimants' dependency was assessed at Rs. 1,000/- per month and Rs. 12,000/- per annum. By multiplying the annual dependency of Rs. 12,000/- with the multiplier of 16, the compensation was worked out at Rs. 1,92,000/-. Further sums of Rs. 2,000/- and Rs. 5,000/- were awarded as funeral expenses and loss of consortium to the widow. Thus, a total sum of Rs. 1,99,000/- was awarded as compensation to the claimants for the death of Jagdish Prasad Bhatt in the accident.

6. Mr. Puran Singh Bisht, learned counsel for the appellants vehemently argued that the Tribunal has erred in discarding the claimants' evidence about the income of the deceased and in assessing his income at Rs. 3,000/- per month only. It was further submitted that the dependency of the claimants was also wrongly assessed by the Tribunal at Rs. 1,000/- per month and Rs. 12,000/- per annum only.

7. Mr. Deepak Rawat, learned counsel for second respondent Oriental Insurance Company Ltd., on the other hand, supported the award and contended that, as the claimants did not lead any reliable evidence about the income of the deceased, no fault can be found with the Tribunal's finding assessing the income of the deceased at Rs. 3,000/- per month.

8. The findings recorded by the Tribunal, that Jagdish Prasad Bhatt died on account of the injuries sustained by him in the accident; the accident occurred due to rash and negligent driving of the driver of the Jeep; and the insurer of the Jeep was liable to pay compensation to the claimants, have now attained finality as none of the respondents have filed any appeal against the award.

9. Though the claimants pleaded that the deceased Jagdish Prasad Bhatt used to earn Rs. 10,000/- per month from his workshop, no reliable evidence was led before the Tribunal to establish the same. In this view of the matter, we do not find any infirmity in the finding recorded by the Tribunal holding the income of the deceased at Rs. 3,000/- per month. Similarly, the assessment of the claimants' dependency at Rs. 1,000/- per month and Rs. 12,000/- per annum also does not suffer from any infirmity whatsoever. The Tribunal has been quite liberal in selecting the multiplier of 16 in the case. We, therefore, do not find any scope for enhancement of the compensation awarded by the Tribunal either on account of the income of the deceased or the claimants' dependency assessed by the Tribunal or the multiplier selected.

10. However, we notice that the Tribunal did not award any amount under the Head of 'Loss of Estate'. We, therefore, award a sum of Rs. 2,500/- towards 'Loss of Estate'.

11. For the foregoing reasons, the appeal filed by the claimants under Section 173 of the Motor Vehicles Act is allowed in part. The compensation of Rs. 1,99,000/- awarded by the Tribunal is enhanced to Rs. 2,01,500/-. The enhanced amount of Rs. 2,500/- shall carry interest at the rate of 6% per annum from the date of the application. No order as to costs.

(P.C. Pant, J.) **(Rajeev Gupta, C.J.)**
25.02.2006 **25.02.2006**

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